

AMENDED IN ASSEMBLY AUGUST 18, 2003

AMENDED IN ASSEMBLY JULY 15, 2003

AMENDED IN ASSEMBLY JUNE 30, 2003

AMENDED IN SENATE JUNE 3, 2003

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL**No. 428**

Introduced by Senator Perata

February 20, 2003

An act to amend Sections 1575.5 and 100445 of, and to repeal and add Section 1575.9 of, the Health and Safety Code, and to amend Sections 14526, 14552, 14573, 14574, and 14574.1 of, and to add Sections 14552.1~~and~~, 14552.2, *and 14572.1* to, the Welfare and Institutions Code, relating to adult day health care, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 428, as amended, Perata. Adult day health care.

The California Adult Day Health Care Act provides for the licensure and regulation of adult day health centers, with administrative responsibility for this program shared between the State Department of Health Services and the California Department of Aging. Existing law establishes a license and renewal fee. Under existing law, this fee, among others, shall be adjusted annually by a specified percentage.

This bill would repeal the license and renewal fee and delete the requirement that the fee be adjusted. The bill, commencing January 1, 2004, would establish a license application fee, and a prescribed license

and Medi-Cal certification renewal fee, with the revenues collected to be used *by the California Department of Aging to implement the preapplication process required under the bill and, with the remaining revenues to be used by the State Department of Health Services and the California Department of Aging in direct proportion to the costs by each department associated with performing other specified services and activities relating to adult day health care centers.*

Existing law provides that no license shall be issued or renewed for an adult day health center that is not approved as a Medi-Cal provider of adult day health services.

This bill would provide that this provision does not apply to an application for an adult day health center license received during a moratorium on the initial certification and enrollment in the Medi-Cal program of adult day health centers imposed in accordance with the bill.

The Adult Day Health Medi-Cal Law establishes adult day health care services as a Medi-Cal benefit for Medi-Cal beneficiaries who meet certain criteria.

This bill would require the ~~State~~ California Department of ~~Health Services~~ Aging, *commencing 180 days after the effective date of the moratorium required by this bill*, to establish an adult day health care preapplication process, to include specific components, and to be completed by an applicant prior to filing an application for initial licensure as a provider, and certification as a Medi-Cal provider, of adult day health care services.

The bill would revise the Adult Day Health Medi-Cal Law, including revising designated Medi-Cal certification standards, deleting the requirement that an adult day health care provider provide services only to those participants living within its service area, as prescribed, and deleting the requirement that the State Department of Health Services conduct specified reviews prior to approving renewal of Medi-Cal certification.

Existing law provides that denial, suspension, or termination of Medi-Cal certification is considered immediate grounds for denial, suspension, or revocation of an adult day health care center license.

This bill would provide that this provision does not apply to a denial of Medi-Cal certification made pursuant to a moratorium imposed in accordance with the bill.

This bill would declare that it is to take effect immediately as an urgency statute.



Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1575.5 of the Health and Safety Code is amended to read:

1575.5. (a) Concurrently with the submission of any application under Section 1575.2, the applicant shall apply to the state department for eligibility certification as a provider of adult day health services reimbursable under the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code). No license shall be issued or renewed for an adult day health center that is not approved as a Medi-Cal provider of adult day health services.

(b) This section shall not apply to an application received during a moratorium imposed in accordance with ~~subdivision (g) of Section 1575.9~~ *Section 14572.1 of the Welfare and Institutions Code*. This section shall apply to an application for licensure as an adult day health care center and certification as a Medi-Cal provider of adult day health care center services received by the California Department of Aging prior to the effective date of, and subsequent to the final date of, the moratorium.

SEC. 2. Section 1575.9 of the Health and Safety Code is repealed.

SEC. 3. Section 1575.9 is added to the Health and Safety Code, to read:

~~1575.9.—~~

1575.9. (a) Commencing January 1, 2004, each application for a new license submitted to the department shall be accompanied by a fee of five thousand dollars (\$5,000).

(b) Commencing January 1, 2004, each renewal application for a license and certification as a Medi-Cal provider of adult day health care center services shall be accompanied by a fee calculated by multiplying the license capacity of the facility times twenty dollars (\$20).

(c) (1) The revenues collected pursuant to this section, upon appropriation by the Legislature, shall be used by the California Department of Aging to implement the preapplication process required by Section 14552.1 of the Welfare and Institutions Code,

1 and by the department and the California Department of Aging for
2 increased assistance and monitoring of facilities ~~such as that is~~
3 authorized by Section 14574.1 of the Welfare and Institutions
4 Code, and *by the department* to implement other administrative
5 licensing and certification activities *pursuant to this chapter*.
6 These revenues shall be allocated first to the California
7 Department of Aging to cover its costs, ~~and then to the department~~
8 ~~to cover its costs, to perform activities as described in this~~ *the full*
9 *cost of administering the preapplication process required by*
10 *Section 14552.1 of the Welfare and Institutions Code, and then any*
11 *remaining revenues shall be allocated to the department and to the*
12 *California Department of Aging in direct proportion to the costs*
13 *of each of these departments that are associated with performing*
14 *the additional activities required by this paragraph.*

15 (2) Notwithstanding subdivisions (a) and (b), fees charged
16 pursuant to this section may not exceed the amount reasonably
17 necessary to cover the cost to the department and the California
18 Department of Aging of performing the activities and services
19 specified in paragraph (1).

20 (d) Failure to pay required fees, including the finding of
21 insufficient funds to cover bona fide business or personal checks
22 submitted for this purpose, shall constitute grounds for denial of
23 a license or forfeiture of a license. The fees shall be considered
24 delinquent after 30 days of the billing date.

25 (e) Fees submitted pursuant to this section are nonrefundable.

26 (f) If the adult day health care center provider rates are reduced,
27 *at any time*, below the 2002–03 fiscal year rate ~~pursuant to the~~
28 ~~Budget Act of 2003~~, subdivision (b) shall be inoperative *during the*
29 *time period of the reduction*. If subdivision (b) becomes
30 inoperative, the applicant for a license renewal shall submit an
31 annual fee ~~as determined by the department~~. ~~However, the director~~
32 ~~shall waive the fee or reduce the fee to~~ *of* five hundred dollars
33 *(\$500) for a renewal license when the director determines that*
34 ~~there is the expectation that no less than 50 percent of the~~
35 ~~participants during the period covered by the fee will be Medi-Cal~~
36 ~~beneficiaries or would be at risk of becoming Medi-Cal~~
37 ~~beneficiaries should institutional long-term care be required.~~

38 ~~(g) (1) Commencing September 1, 2003, a statewide~~
39 ~~moratorium on the initial certification and enrollment in the~~
40 ~~Medi-Cal program of any adult day health care center shall be~~

1 ~~imposed for a period of no longer than 360 days, subject to the~~
2 ~~following exceptions:~~

3 ~~(A) During the last 180 days of the moratorium period, the~~
4 ~~California Department of Aging may make exceptions to the~~
5 ~~moratorium for adult day health centers that are located in~~
6 ~~underserved areas, or that serve underserved populations.~~

7 ~~(B) Programs of All-Inclusive Care for the Elderly (PACE)~~
8 ~~established pursuant to Chapter 8.75 (commencing with Section~~
9 ~~14590) of Part 3 of Division 9 of the Welfare and Institutions Code~~
10 ~~shall be exempted for the entire moratorium period.~~

11 ~~(2) The statewide moratorium enacted by this subdivision shall~~
12 ~~not apply to applications for licensure and certification as a~~
13 ~~Medi-Cal provider of adult day health care center services~~
14 ~~submitted to the California Department of Aging prior to the~~
15 ~~effective date of the moratorium.~~

16 ~~(3) The moratorium shall not prohibit the relocation or change~~
17 ~~of ownership of a center licensed and certified prior to the effective~~
18 ~~date of this section.~~

19 ~~(4) The implementation of the moratorium does not require~~
20 ~~further legislative action or adoption of regulations pursuant to the~~
21 ~~Administrative Procedure Act (Chapter 3.5 (commencing with~~
22 ~~Section 11340) of Part 1 of Division 3 of the Government Code).~~

23 SEC. 3.5. Section 100445 of the Health and Safety Code is
24 amended to read:

25 100445. (a) The fees or charges required to accompany an
26 application for the issuance or renewal of any license pursuant to
27 Sections 1403, 1729, and 1743.17 shall be adjusted annually,
28 commencing July 1, 1988, by the percentage change printed in the
29 Budget Act and determined by dividing the General Fund
30 appropriation to the Licensing and Certification Division in the
31 current state fiscal year by the General Fund appropriation to the
32 Licensing and Certification Division in the preceding state fiscal
33 year. Commencing July 1, 1988, the fees or charges subject to
34 adjustment pursuant to this subdivision shall be the fees or charges
35 that would have been payable in the prior calendar year without
36 regard to the provisions of subdivision (b).

37 (b) The fees or charges required to accompany an application
38 for the issuance or renewal of any license pursuant to Sections
39 1729 and 1743.17 shall also be adjusted annually, commencing
40 July 1, 1988, by a percentage determined by dividing the total

1 amount of federal funds available for home health and private duty
2 nursing agencies during the federal fiscal year ending on
3 September 30 of the year immediately preceding the effective date
4 of the change in fees, less federal funds available for home health
5 and private duty nursing agencies for the federal fiscal year that
6 began on October 1 of the year immediately preceding the
7 effective date of the change in fees, by the total estimated revenue
8 derived pursuant to Sections 1729 and 1743.17 for the fiscal year
9 beginning July 1 of the year immediately preceding the effective
10 date of the change in fees.

11 (c) The department shall by July 1 of each year publish a list of
12 the actual numerical fee charges as adjusted pursuant to this
13 section. This adjustment of fees and the publication of the fee list
14 shall not be subject to the requirements of Chapter 3.5
15 (commencing with Section 11340) of Part 1 of Division 3 of Title
16 2 of the Government Code.

17 SEC. 4. Section 14526 of the Welfare and Institutions Code
18 is amended to read:

19 14526. Participation in an adult day health care program shall
20 require prior authorization by the department. The authorization
21 request shall be initiated by the provider and shall include the
22 results of the assessment screening conducted by the provider's
23 multidisciplinary team and the resulting individualized plan of
24 care. Participation shall begin upon application by the prospective
25 participant or upon referral from community or health agencies,
26 physician, hospital, family, or friends of a potential participant.

27 SEC. 5. Section 14552 of the Welfare and Institutions Code
28 is amended to read:

29 14552. In order to obtain certification as a provider of adult
30 day health care under this chapter and Chapter 7 (commencing
31 with Section 14000), the following standards shall be met:

32 (a) The provider shall have met the preapplication
33 requirements pursuant to Section 14552.1.

34 (b) The provider shall have met all other requirements of
35 licensure as an adult day health care center pursuant to Chapter 3.3
36 (commencing with Section 1570) of Division 2 of the Health and
37 Safety Code.

38 (c) The provider shall comply with requirements of this chapter
39 regarding program and scope of services.

40 (d) The provider shall have appropriate licensed personnel.

(e) The provider shall employ required personnel for furnishing of required services pursuant to Section 14550 consistent with commonly accepted professional standards.

(f) The provider shall afford to each participant all rights, including the right to be free from harm and abuse, identified in the rules and regulations adopted pursuant to Section 1580 of the Health and Safety Code.

(g) A provider serving a substantial number of participants of a particular racial or ethnic group, or participants whose primary language is not English, shall employ staff who can meet the cultural and linguistic needs of the participant population.

(h) A provider shall have organizational and administrative capacity to provide services under the provisions of this chapter.

SEC. 6. Section 14552.1 is added to the Welfare and Institutions Code, to read:

14552.1. (a) Commencing 180 days after the effective date of the ~~Budget Act of 2003~~, *moratorium imposed pursuant to Section 14572.1*, the California Department of Aging shall establish an adult day health care preapplication process that shall be completed by an applicant prior to filing an application for initial licensure ~~as a provider, and~~, *and for certification as a Medi-Cal provider*; of adult day health care services under this chapter and Chapter 7 (commencing with Section 14000). The preapplication process shall consist of an orientation program and a written proposal for the provision of adult day health care services.

(b) (1) The preapplicant shall attend an eight-hour orientation program provided by the California Department of Aging or by a nonprofit provider organization approved by the California Department of Aging pursuant to paragraph (3). The orientation shall include, but not be limited to, the following content areas:

(A) The regulatory and statutory requirements for adult day health care.

(B) Operational responsibility of the applicant and staff.

(C) Financial considerations for startup and ongoing operating costs.

(D) The preapplication process and the licensing and certification process.

(E) Obtaining data regarding demographics and determining need for adult day health care services.

1 (2) The preapplicant shall be provided a preapplication
2 package at the orientation, upon request.

3 (3) To be approved by the California Department of Aging to
4 conduct the orientation training as described in paragraph (1), the
5 nonprofit provider organization shall comply with all of the
6 following requirements:

7 (A) Provide evidence that orientation instructors have at least
8 five years experience in either training adult day health care
9 providers or in the provision of adult day health care services.

10 (B) Submit a curriculum and list of instructors for review and
11 approval by the California Department of Aging.

12 (C) Maintain a record of all orientation attendees and provide
13 the California Department of Aging with the attendee information
14 within 15 working days or upon request.

15 (4) A preapplicant who is already licensed as an adult day
16 health care center shall not be required to attend an orientation if
17 the last orientation attended was within 12 months of the next
18 scheduled orientation.

19 (c) The preapplicant shall submit to the California Department
20 of Aging a proposal that includes, but is not limited to, all of the
21 following:

22 (1) A program plan as specified in Section 14552.2.

23 (2) Operational policies and procedures identified in the rules
24 and regulations adopted pursuant to Section 1580 of the Health and
25 Safety Code.

26 (3) A marketing plan that includes, but is not limited to, all of
27 the following:

28 (A) Data that describes the population base for the identified
29 geographic area proposed to be served by the adult day health care
30 center, including, but not limited to, all of the following:

31 (i) The number ~~of~~ of persons over the age of 65 years.

32 (ii) The number of persons over the age of 65 years who are
33 potential adult day health care users.

34 (iii) The number of Medi-Cal beneficiaries.

35 (iv) The number of adults with disabilities.

36 (v) The number of adults with disabilities who are potential
37 adult day health care users.

38 (vi) If a specialty population will be served, such as persons
39 with developmental disabilities, persons with mental disabilities,
40 or persons of a special racial or ethnic group, the number of

1 persons in this specialty population who are potential adult day
2 health care users.

3 (vii) The licensed capacity of adult day health care centers,
4 including programs for all-inclusive care for the elderly, within a
5 10-mile radius of the proposed facility.

6 (B) The center's plan for marketing its services to the target
7 population, including methods and marketing messages.

8 (4) A plan to coordinate with and utilize other services in the
9 home and community based continuum of care within the
10 identified geographic area.

11 (5) A proforma budget and monthly cashflow projection for 24
12 months.

13 (d) The preapplicant shall review the proposal with the
14 California Department of Aging. The California Department of
15 Aging shall notify the preapplicant within 30 days of receipt of the
16 proposal of a date, time, and place for the review. The review,
17 which may be done by telephone or in person at the department's
18 discretion, shall include, but not be limited to, a discussion of the
19 specific portions of the proposal that are incomplete.

20 (e) If, within 120 days of the review, the preapplicant has not
21 submitted a complete proposal, the preapplicant shall be notified
22 that the proposal is considered withdrawn and a new proposal is
23 required. A determination by the California Department of Aging
24 that the proposal has been withdrawn is not subject to appeal or
25 hearing pursuant to Sections 14123 and 14574.

26 (f) Upon notification by the California Department of Aging
27 that a preapplication process is complete, a preapplicant may
28 proceed to apply for licensure and certification as a Medi-Cal
29 provider of adult day health care center services pursuant to Article
30 3 (commencing with Section 1575.2) of Chapter 3.3 of the Health
31 and Safety Code.

32 (g) This section shall be implemented only to the extent funds
33 are made available for the purposes of this section in the annual
34 Budget Act or another statute.

35 (h) Implementation of the adult day health care center
36 preapplication process required by this section, including the
37 approval process for an organization to provide training, does not
38 require adoption of regulations pursuant to the Administrative
39 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
40 Part 1 of Division 3 of Title 2 of the Government Code).

1 SEC. 7. Section 14552.2 is added to the Welfare and
2 Institutions Code, to read:

3 14552.2. (a) “Program plan,” as required under paragraph
4 (1) of subdivision (c) of Section 14552.1, means a written
5 description of the adult day health care center’s philosophy,
6 objectives, and processes for providing required services to the
7 participant populations.

8 (b) The program plan shall include any of the following
9 elements, as requested by the California Department of Aging, and
10 shall be submitted as required in Sections 14552.1 and 14574.1:

11 (1) The total number of participants the center proposes to
12 serve, or currently serves, daily.

13 (2) A profile of the participant population the center proposes
14 to serve, or currently serves, that includes a description of the
15 specific medical, social, and other needs of each population.

16 (3) A description of the specific program elements and services
17 that addresses the medical, social, and other needs of each
18 participant population that the center proposes to serve, or
19 currently serves, as specified in paragraph (2). “Program
20 elements” means the components of an adult day health care
21 program, as specified in Section 14550.

22 (4) A description of the specialized professional and program
23 staff that will provide, or currently provide, the adult day health
24 care center’s program services, as specified in paragraph (3), and
25 that staff’s responsibilities. The plan shall demonstrate that the
26 adult day health care center is organized and staffed to carry out
27 the requirements as specified in the rules and regulations adopted
28 pursuant to Section 1580 of the Health and Safety Code.

29 (5) An in-service training plan for each center staff member to
30 commence within the first six months of employment. The
31 training plan shall address, at a minimum, the specific medical,
32 social, and other needs of each participant population the center
33 proposes to serve, as specified in paragraph (2).

34 (6) A sample individual plan of care for each specialty
35 population the adult day health care center proposes to serve, or
36 currently serves, and a sample of a one-week schedule of daily
37 program services for each sample individual plan of care. The
38 individual plan of care shall demonstrate the specific medical,
39 social, and other needs of each participant population the adult day
40 health center proposes to serve.

(7) A plan for a behavior modification program if such a program will be used as a basic intervention for meeting the needs of a special population, such as persons with developmental disabilities or persons with mental disabilities.

(c) This section shall be implemented only to the extent funds are made available for the purposes of this section in the annual Budget Act or another statute.

(d) The implementation of the program plan requirements does not require adoption of regulations pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 8. *Section 14572.1 is added to the Welfare and Institutions Code, to read:*

14572.1. (a) (1) A statewide moratorium on the initial certification and enrollment in the Medi-Cal program of adult day health care centers shall be imposed for a period of no longer than 365 days, subject to the following exceptions:

(2) During the last 180 days of the moratorium period, the California Department of Aging may make exceptions to the moratorium for adult day health centers that are located in underserved areas, or that serve underserved populations, as determined by the California Department of Aging.

(3) Programs of All-Inclusive Care for the Elderly (PACE) established pursuant to Chapter 8.75 (commencing with Section 14590) shall be exempted for the entire moratorium period.

(b) The moratorium shall not apply to applications for licensure and certification as a Medi-Cal provider of adult day health care center services submitted to the California Department of Aging prior to the effective date of the moratorium.

(c) The moratorium does not prohibit the relocation or change of ownership of adult day health care centers licensed and certified prior to the effective date of this section.

(d) The implementation of the moratorium does not require further legislative action or adoption of regulations pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code).

SEC. 9. Section 14573 of the Welfare and Institutions Code is amended to read:

14573. (a) Initial Medi-Cal certification for adult day health care providers shall expire 12 months from the date of issuance.

1 The director shall specify any date he or she determines is
2 reasonably necessary because of the record of the applicant and to
3 carry out the purposes of this chapter, but not more than 24 months
4 from the date of issuance, when renewal of the certification shall
5 expire. The certification may be extended for periods of not more
6 than 60 days if the department determines it to be necessary.

7 (b) Before certification renewal, the provider shall submit with
8 the application for renewal a report according to department
9 specifications that includes an analysis of income and
10 expenditures, continued demonstrated community need, services,
11 participant statistics and outcome, and adherence to policies and
12 procedures.

13 (c) Prior to approving renewal of Medi-Cal certification, the
14 California Department of Aging shall conduct a financial review
15 and onsite medical and management reviews. The reviews shall be
16 conducted by a team of persons with appropriate technical skills.
17 The management review shall be performed by the entity
18 responsible for directing and coordinating the program, as
19 specified in the interagency agreement entered into pursuant to
20 Section 1572 of the Health and Safety Code.

21 (d) Where the director determines that the public interests
22 would be served thereby, a public hearing may be held on any
23 renewal application subject to this section. The findings of the
24 departmental program and licensing reviews and the provider's
25 annual evaluation report shall be presented at the hearing.

26 ~~SEC. 9.~~—

27 *SEC. 10.* Section 14574 of the Welfare and Institutions Code
28 is amended to read:

29 14574. (a) The director shall terminate the Medi-Cal
30 certification of any adult day health care provider at any time if he
31 or she finds the provider is not in compliance with standards
32 prescribed by this chapter or Chapter 7 (commencing with Section
33 14000) or regulations adopted pursuant to these chapters. The
34 director shall give reasonable notice of his or her intention to
35 terminate the certification to the provider and participants in the
36 center. The notice shall state the effective date of, and the reason
37 for, the termination.

38 (b) The denial, suspension, or termination of certification shall
39 be considered immediate grounds for denial, suspension, or
40 revocation of the license.

(c) Proceedings to deny an application for certification or licensure, terminate or suspend certification, or revoke or suspend licensure shall be consolidated whenever possible.

(d) The California Department of Aging and the department shall coordinate an action or actions to the extent appropriate to ensure consistency and uniformity.

(e) The provider shall have the right to appeal the department's decision made pursuant to Section 14123.

(f) Subdivision (b) does not apply to a denial of Medi-Cal certification made pursuant to a moratorium imposed in accordance with ~~subdivision (g) of Section 1575.9 of the Health and Safety Code.~~ *Section 14572.1.*

~~SEC. 10.~~

SEC. 11. Section 14574.1 of the Welfare and Institutions Code is amended to read:

14574.1. (a) Every adult day health care center shall be periodically inspected and evaluated for quality of care by a representative or representatives designated by the director, unless otherwise specified in the interagency agreement entered into pursuant to Section 1572 of the Health and Safety Code. Inspections shall be conducted prior to the expiration of certification, but at least every two years, and as often as necessary to ensure the quality of care being provided. As resources permit, an inspection may be conducted prior to, as well as within, the first 90 days of operation.

(b) If, as a result of the inspection, the department or the California Department of Aging, as specified in the interagency agreement, determines that the adult day health care center has serious deficiencies that pose a risk to the health and safety of the participants, the department or the California Department of Aging, as specified in the interagency agreement, may immediately take any of the following actions, including, but not limited to:

(1) Require a plan of correction, including as requested, a program plan pursuant to Section 14552.2.

(2) Limit participant enrollment.

(3) Prohibit new participant enrollment.

(c) The provider shall have the right to dispute an action taken under paragraphs (2) and (3) of subdivision (b). The department or the California Department of Aging, as specified in the

1 interagency agreement, shall accept, consider, and resolve
2 disputes filed pursuant to this subdivision in a timely manner. The
3 dispute resolution process shall be determined by the California
4 Department of Aging in consultation with the department.

5 (d) The director shall ensure that public records accurately
6 reflect the current status of any potential actions including the
7 resolution of disputes.

8 ~~SEC. 11.~~

9 *SEC. 12.* Section 2 of this act shall become operative on
10 January 1, 2004.

11 ~~SEC. 12.~~

12 *SEC. 13.* This act is an urgency statute necessary for the
13 immediate preservation of the public peace, health, or safety
14 within the meaning of Article IV of the Constitution and shall go
15 into immediate effect. The facts constituting the necessity are:

16 In order to make necessary statutory changes to implement the
17 Budget Act of 2003 at the earliest possible time, it is necessary that
18 this act take effect immediately.

